

**MINUTES**  
**LIVESTOCK FACILITY SITING REVIEW BOARD**  
**TELECONFERENCE MEETING**  
**December 19, 2008**  
**Boardroom 106, 2811 Agriculture Drive, Madison, WI**

Chair Holte called the meeting to order at 12:03 p.m. Other LFSRB members present by phone were Andy Johnson, Bob Selk, Fran Byerly, Lee Engelbrecht, Bob Topel, and Jerry Gaska. A quorum was present. DATCP staff present were Cheryl Daniels and Lori Price.

**Call to order**

Holte stated the meeting agenda was publicly noticed, as required, and then presented the agenda for approval. He noted that the agenda was amended and sent to the board members prior to today's meeting. Topel moved to approve the agenda, and Johnson seconded the motion. The motion passed.

Holte presented the November 21, 2008, meeting minutes for approval. Johnson made a motion to approve the minutes as written, and Selk seconded the motion. The motion passed.

***Van Dyke v. Racine County, Docket No. 08-L-02: Review and Approve Decision—Jim Holte***

Holte opened up this agenda item for discussion on any comments on the draft decision. Being none, Topel made a motion for the LFSRB to approve the decision as written. Bylerly seconded the motion. The motion passed unanimously.

Daniels requested that each board member sign the signature page, cross out "draft" on the page, initial the correction, and send it back to her for inclusion into the order.

***Larson Acres, Inc. v. Town of Magnolia, Docket No. 07-L-01, circuit court decision—Cheryl Daniels***

Daniels reported that the circuit court decision in this case was rendered on December 15<sup>th</sup>. She explained the three standards of review (great weight, due weight, and de novo) the circuit court judge could have used in this case. (Each standard gives the court a certain amount of deference to the agency, with great weight giving the highest and de novo giving the lowest.) The board took the position that this case should be reviewed using the due weight standard, giving the agency an "intermediate level of deference." The circuit court judge used the de novo ("anew") standard for review in this case with no deference to the agency. Prior to today's meeting, Daniels spoke with Bob Hunter, Legal Counsel for the LFSRB, about the judge's decision. Hunter believes the board's position on standard for review in this case is a strong one. Daniels went on to explain that the judge sided with the plaintiffs on the permit conditions meeting the livestock siting law, and that the board does not have the power to review the conditions in the permit. However, Hunter believes that review of the conditions on the permit is in the purview of the LFSRB. The judge also listed issues that were not essential to the review in this case, including the factual findings and the applicability of NRCS 590 standard. Both the LFSRB and Larsen have until January 30<sup>th</sup> to appeal this decision.

The board members then discussed whether to appeal this case to a higher court. They were not comfortable leaving the judge's decision "as is" because it challenges the board's authority where it would limit that authority to solely a "yes" or "no" decision on a permit appeal without allowing for any modification. The judge also decided that the neighbors within the two-mile radius of the facility had no standing to appeal the board's decision, which Daniels commented was incorrect.

Johnson then made a motion for the LFSRB to direct department staff to recommend appeal of this case to DOJ. Gaska seconded the motion. Daniels explained that it would be up to DOJ to decide whether the case is appeal worthy. If they decide it is not, then the board would have to hire its own attorney. If DOJ decides to appeal, the District 4 Court of Appeals will hear the case. If the case should go as high as the State Supreme Court for appeal, the court will only take up the case "by permission" meaning they have the decision whether to hear the case or not. Motion passed unanimously.

Daniels will speak with Hunter on whether the board needs to meet with him in closed session to outline parts of the decision that need to be challenged. Daniels clarified that once the appeal is filed, there will be an automatic "stay" on the judge's order to keep the board's order in place and it does not implement the judge's order until the court of appeals makes its decision.

#### **Discussion of Changes to the Board Bylaws and Appendix—Cheryl Daniels**

Daniels reported that she did not receive from board members any suggested changes to their bylaws and appendix. There were no changes suggested at this meeting so the bylaws and appendix will remain as written.

#### **Board Schedule and Future Agenda Items**

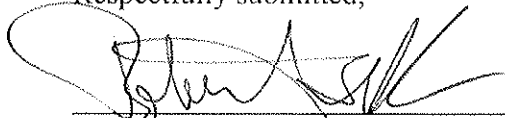
The board members reviewed and agreed upon the dates listed for the 2009 meetings. These dates will be posted on the board's webpage. Daniels stated that the only agenda item she might anticipate for the future was a meeting with Hunter to discuss the appeal on the Larson case.

Daniels reported that in May of 2009, Selk's and Gaska's terms on the board will end. She will notify the DATCP Secretary's office of this fact for further consideration.

#### **Adjourn**

Johnson moved to adjourn the meeting, and Byerly seconded the motion. The motion passed. The meeting ended at 12:54 p.m.

Respectfully submitted,



Bob Selk, Secretary

6.30.09

Date

Recorder: LP